



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/642,221	08/18/2000	Ryukou Arisawa	32892	6271

116 7590 08/21/2003  
PEARNE & GORDON LLP  
526 SUPERIOR AVENUE EAST  
SUITE 1200  
CLEVELAND, OH 44114-1484

EXAMINER

APPIAH, CHARLES NANA

ART UNIT	PAPER NUMBER
----------	--------------

2682

DATE MAILED: 08/21/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/642,221

Applicant(s)

ARISAWA ET AL.

Examiner

Charles Appiah

Art Unit

2682

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 13 June 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) Z.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### DETAILED ACTION

1. Examiner notes the inadvertent non-inclusion of form PTO-892 as an attachment to the Office Action, mailed on March 18, 2003 as Paper No. 6. A copy of the PTO-892 is being provided for Applicants' records.

#### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 1-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Kurakake (5,900,564)** in view of **Hsu et al. (6,587,684)**.

Regarding claim 1, Kurakake discloses a music data apparatus comprising: a music data retrieving means, which retrieves music data (see col. 5, lines 5-39), and a downloading means which downloads an application software corresponding to a music

data defined in connection with the music data from a remote server in response to a user selection (see col. 4, lines 17-37). Kurakake shows a communication interface, which is activated for communicating with a host station in a network (see Fig. 1) for downloading music to a local storage on the terminal apparatus (see col. 4, lines 38-61), but fails to explicitly teach the apparatus being a portable cellular telephone.

Hsu discloses a system for downloading software related to digital telephone services using a client browser to a digital portable wireless telephone (see Fig. 2, col. 3, line 55 to col. 4, line 40). According to Hsu the digital telephone initiates a data call for the transmission of data by execution of a client browser routine, which generates the message based on user inputs, and using protocols such as TCP/IP an addressed server downloads a requested software to the digital telephone (see col. 11, line 51 to col. 12, line 52).

It would therefore have been obvious to one of ordinary skill in the art to implement the music data processing apparatus of Kurakake Hsu's digital cellular telephone for the benefit of enabling a user to select and control the wireless upgrading of software in a user's telephone for the activation of new services or the enhancement of existing services as taught by Hsu.

Regarding claim 2, the combination of Kurakake and Hsu would inherently show that the retrieving means retrieves the music data from a storage medium as taught by Kurakake (see col. 4, lines 3-30).

Regarding claim 3, Kurakake shows the retrieving means retrieves the music data via a communication means (see Fig. 1, link between 107 and network 120).

Regarding claim 4, the combination of Kurakake and Hsu would further show an application software executing means which executes the application software in association with the music data in the cellular telephone as taught by Kurakake (see col. 9, line 66 to col. 10, line 21, col. 11, lines 38-42).

Regarding claim 5, Kurakake's teaching of selectively executing the various application programs to treat the music data based on the downloaded new version (see col. 11, lines 42-64) reads on the application software executing means executes a plurality of pieces of application software in parallel simultaneously in association with the music data.

Claim 6, which recites the method steps for implementing the features of the portable telephone of claim 1 is rejected for the same reasons as set forth in the rejection of claim 1 above.

Regarding claim 7, the combination of Kurakake and Hsu would meet the feature of the downloading means download the application software via a wireless communication means, as taught by Hsu (see Fig. 1).

Claims 8-10 are rejected for the same reasons as set forth in the rejection of claims 1-5 above.

### ***Conclusion***

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Tsurumi et al. (5,890,910) discloses a method for managing files in a communication karaoke apparatus.

Art Unit: 2682

Barbara et al. (5,926,789) discloses a system for selectively transferring audio data from a server to a client.

Ito (6,236,832) discloses the transmission of music related information over a mobile telephone network to a requesting user

Ramaswamy (6,423,892) discloses a method for downloading MP3 files from the Internet.

Tantawy et al. (6,597,891) discloses a method for selecting and downloading digital content using on-line browsing.

### ***Response to Arguments***

6. Applicant's arguments with respect to claims 1-5 have been considered but are moot in view of the new ground(s) of rejection.

.Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles Appiah whose telephone number is 703 305-4772. The examiner can normally be reached on M-F 7:30AM-5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vivian Chin can be reached on 703 305-6739. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9314 for regular communications and 703 308-6296 for After Final communications.

Art Unit: 2682

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 306-0377.



**CHARLES APPIAH**  
**PRIMARY EXAMINER**

CA  
August 13, 2003